

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 CHRISTOPHER BYRNES,)

5 Plaintiff)

6 v.)

7 NCO FINANCIAL SYSTEMS, INC.,)

8 Defendant)

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

9
10 COMPLAINT

11 CHRISTOPHER BYRNES ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN,
12 P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

13
14 **INTRODUCTION**

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
16 U.S.C. § 1692 *et seq.* ("FDCPA").

17
18 **JURISDICTION AND VENUE**

19 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
20 that such actions may be brought and heard before "any appropriate United States district court
21 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
22 jurisdiction of all civil actions arising under the laws of the United States.

23 3. Defendant conducts business and has an office in the Commonwealth of
24 Pennsylvania and therefore, personal jurisdiction is established.
25

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3
4 **PARTIES**

5 6. Plaintiff is a natural person residing in Miller Place, New York, 11764.

6 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7 8. Defendant is a national debt collection company with corporate headquarters
8 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
10 and repeatedly contacted Plaintiff in an attempt to collect a debt.

11 10. Defendant acted through its agents, employees, officers, members, directors,
12 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

13
14
15 **PRELIMINARY STATEMENT**

16 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
17 which prohibits a catalog of activities in connection with the collection of debts by third parties.
18 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
19 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
20 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
21 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
22 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
23 unconscionable conduct, both generally and in a specific list of disapproved practices.
24
25

1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.
13

14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.
20

21 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
24 collection practices are not competitively disadvantaged, and to promote consistent State action
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. Beginning on or around September 2010 and continuing until June 2011, Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.

18. Defendant, its employees and servants harassed Plaintiff by making continuous calls to his cellular telephone number, home telephone number, and work telephone number.

19. Plaintiff received telephone calls and voice messages from Defendant on a number of occasions from the following phone numbers: (253) 248-6405 and (206) 629-8633; the undersigned has confirmed that the number belongs to Defendant.

20. Defendant placed repeated calls to Plaintiff's cellular phone almost every day, causing Plaintiff to receive, at times, more than two (2) collection calls a day and at times, more than five (5) collection calls a day.

21. Defendant has contacted Plaintiff several times before 8:00 o'clock in the morning.

22. Defendant's representatives threatened to contact Plaintiff's place of employment and prevent Plaintiff from being able to use direct deposit.

23. Defendant's representatives have contacted Plaintiff's place of employment.

24. Defendant's representatives threatened Plaintiff that he would end up living in his

1 car if he did not pay the alleged debt.

2 25. Defendant's intentional actions in attempting to collect the alleged debt were
3 harassing, abusive and highly deceptive.
4

5 CONSTRUCTION OF APPLICABLE LAW

6 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
7 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
8 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
9 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
10 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
11 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
12

13 27. The FDCPA is a remedial statute, and therefore must be construed liberally in
14 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
15 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
16 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
17 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
18 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
19 2002).
20

21 28. The FDCPA is to be interpreted in accordance with the "least sophisticated"
22 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
23 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
24 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
25 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,

1 and the fact that a false statement may be obviously false to those who are trained and
 2 experienced does not change its character, nor take away its power to deceive others less
 3 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 4 ensures protection of all consumers, even naive and trusting, against deceptive collection
 5 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 6 collection notices. Clomon, 988 F. 2d at 1318.

8 9 **COUNT I**

10 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

11 29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
 12 more of the following ways:

- 13 a. Defendant violated the FDCPA generally;
- 14 b. Defendant violated § 1692c(a)(1) of the FDCPA when it contacted the
 15 Plaintiff at an unusual time or place or a time and place known or should be
 16 known to be inconvenient to the Plaintiff in connection with the collection of
 17 a debt; specifically in the absence of knowledge of circumstances to the
 18 contrary, a debt collector shall assume that the convenient time for
 19 communicating with a consumer is after 8 o'clock antemeridian and before 9
 20 o'clock postmeridian, local time at the consumer's location;
- 21 c. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in
 22 connection with the collection of an alleged debt;
- 23 d. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's
 24 telephone to ring repeatedly or continuously with the intent to harass, annoy
 25

1 or abuse Plaintiff;

2 e. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
3 misleading representations or means in connection with the collection of a
4 debt;

5 f. Defendant violated § 1692e(10) of the FDCPA by using false representations
6 or deceptive means to collect or attempt to collect a debt;

7 g. Defendant violated § 1692f of the FDCPA by using unfair and
8 unconscionable means with Plaintiff to collect or attempt to collect a debt;
9 and
10

11 h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
12 and failed to comply with the FDCPA.

13
14 WHEREFORE, Plaintiff, CHRISTOPHER BYRNES, respectfully prays for a judgment
15 as follows:

- 16 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
17 1692k(a)(1);
- 18 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
19 15 U.S.C. § 1692k(a)(2)(A);
- 20 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
21 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 22 d. Any other relief deemed appropriate by this Honorable Court.
- 23

24 **DEMAND FOR JURY TRIAL**

25 PLEASE TAKE NOTICE that Plaintiff, CHRISTOPHER BYRNES, demands a jury

1 trial in this case.

2
3 RESPECTFULLY SUBMITTED,

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5 DATED: 08/29/11

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6
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